



Los Angeles County  
Department of Regional Planning

*Planning for the Challenges Ahead*



September 21, 2006

James E. Hartl, AICP  
Director of Planning

TO: Mayor Michael D. Antonovich  
Supervisor Gloria Molina  
Supervisor Yvonne B. Burke  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe

FROM: James E. Hartl, AICP  
Acting Director of Planning

**SUBJECT: REPORT ON THE PROTECTION OF NEIGHBORHOODS WITHIN THE  
CONTEXT OF IMPLEMENTING THE DENSITY BONUS ORDINANCE  
(ITEM NO. 9, JULY 25, 2006)**

On July 25, 2006, at a hearing in which your Board amended and approved the density bonus ordinance (ORD. 2006-0063), your Board, on the attached motion by Supervisor Burke, also directed this Department to report back within 60 days on the following: 1) Ways to protect the public and neighborhoods from developers who may utilize the density bonus to overcome or avoid some of the zoning restrictions and issues such as traffic, parking, water, and health and safety; 2) The implication of an appeal by residents; and 3) Whether or not clarification from the State is needed on "on-menu" and "off-menu" incentives to assist the County in meeting requirements.

The attached background report concludes that there are sufficient safeguards within the County density bonus ordinance, existing regulations and case review procedures, and additional steps of inquiry that will be added to the review process, to address the Board's concerns over the protection of the public and neighborhoods from potential significant adverse impacts and prevent the inappropriate granting of density bonuses and affordable housing incentives. The report discusses the appeal process available to residents and how that provides additional neighborhood protection from significant modifications of development standards. The report indicates that the menu of incentives and other County provisions are consistent with the State Density Bonus Law, and therefore, do not require additional clarification from the State regarding the granting of affordable housing incentives.

The report identifies the following safeguards:

Safeguards within the **County density bonus ordinance** include a menu of incentives, which contains modest modifications of development standards, and discourages the

granting of affordable housing incentives for projects that are located in areas that are not appropriate for higher densities because of hazards, sensitive resources or infrastructure limitations. "Off-menu" incentives can be requested, but are subject to additional procedures, including the notification to adjacent property owners, local community groups and the Regional Planning Commission; appeal by any interested parties to the Regional Planning Commission; and call for review by the Regional Planning Commission. In addition, the County density bonus ordinance requires the submission of a real estate development pro forma and a supplemental environmental questionnaire for requests for affordable housing incentives. Furthermore, all projects granted a density bonus and/or affordable housing incentives per the County density bonus ordinance are subject to a covenant and agreement, which runs with the land. In addition, property owners are required to register their properties annually, and are subject to monitoring by the Community Development Commission.

Safeguards within **existing regulations and review procedures** include zoning, itself, in which density bonuses and affordable housing incentives can only be granted where the project, in and of itself, is permitted. In some cases, the application of the County density bonus ordinance would be contingent upon the approval of other discretionary entitlements, which would be subject to full environmental review under CEQA and could be appealed or called up for review by the Board of Supervisors. Furthermore, the provisions are subject to zoning enforcement procedures in the case of non-compliance.

Finally, **additional steps of inquiry** used by the Department, including consulting other County agencies and looking up properties on the California Register of Historical Places, will ensure the protection of the public and neighborhoods and prevent the inappropriate granting of density bonuses and affordable housing incentives.

If you have any questions, please contact me or Julie Moore of my staff at (213) 974-6425 or via e-mail at [jmoore@planning.lacounty.gov](mailto:jmoore@planning.lacounty.gov).

JEH:RDH:JTM:cc

C: Sachi Hamai, Executive Officer—Clerk of the Board  
David E. Janssen, Chief Administrative Officer  
Carlos Jackson, Executive Director, Community Development Commission

Attachments: Board Report  
Minutes of the Board's July 25, 2006 Meeting (Item #9)

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**REPORT TO  
LOS ANGELES COUNTY  
BOARD OF SUPERVISORS**

**REPORT ON IMPLEMENTING THE  
DENSITY BONUS ORDINANCE AND ISSUES REGARDING  
THE PROTECTION OF THE PUBLIC AND NEIGHBORHOODS**

**September 21, 2006**

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On July 25, 2006, the Los Angeles County Board of Supervisors amended and approved the density bonus ordinance (ORD. 2006-0063), and on August 8, 2006 adopted the ordinance in its final form. The density bonus ordinance includes provisions for the granting of density bonuses and affordable housing incentives through non-discretionary and discretionary procedures.

This report provides the background for the Department of Regional Planning's response to the Board motion, dated July 25, 2006, to report back within 60 days on the following:

- 1) Ways to protect the public and neighborhoods from developers who may utilize the density bonus to overcome or avoid some of the zoning restrictions and issues such as traffic, parking, water, and health and safety;
- 2) The implication of an appeal by residents;
- 3) Whether or not clarification from the State is needed on "on-menu" and "off-menu" incentives to assist the County in meeting requirements.

## **INTRODUCTION**

The State of California Housing Element Law<sup>1</sup> acknowledges a local government's responsibility to both provide adequate housing to all economic segments of the community, and to implement the goals set forth in its general plan. However, in the State Density Bonus Law, which makes exceptions to zoning laws for affordable

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<sup>1</sup> Sections 65580-65589.8 of the California Government Code.

housing, maintaining those two levels of responsibility can become a precarious balancing act for local governments. The State Density Bonus Law poses a conundrum within the Government Code, which on one hand enables local governments to institute zoning and general plan land use designations, which are inherently designed to protect the public health, safety, or welfare and, on the other hand, allows exceptions to zoning and general plan designations for affordable housing.

This report discusses how the County, in compliance with the State Density Bonus Law, addresses this challenge, and concludes that there are several safeguards in place to protect neighborhoods in the unincorporated areas from potential significant adverse impacts, as well as inappropriate requests for density bonuses and affordable housing incentives. In addition, the report outlines the roles of the Director of Planning, the Regional Planning Commission, any interested person and the Board of Supervisors in the review of requests for density bonuses and affordable housing incentives, and illustrates those roles in examples of how cases are evaluated.

## **PART I: SAFEGUARDS**

### **BACKGROUND: STATE REQUIREMENTS**

The State Density Bonus Law limits the County's ability to apply discretion over the granting of density bonuses and affordable housing incentives (as well as waivers or modifications to development standards and parking reductions). In addition, the State law is clear that density bonuses and affordable housing incentives are to be granted through non-discretionary review.<sup>2</sup> Furthermore, the State law guarantees plaintiffs attorneys fees and the costs of suit in the event that a court of law finds that a local government is not in compliance with the State Density Bonus Law.<sup>3</sup>

In particular, the County's ability to deny requests for affordable housing incentives, which are broadly defined by the State density bonus law, is limited in scope. The bases by which the County can deny a request for an affordable housing incentive are the following:

*Subdivision (d) of Section 65915:*

*(A) The...incentive is not required in order **to provide for affordable housing costs**, as defined in Section 50052.5 of the Health and Safety Code, or **for rents** for the targeted units to be set as specified in subdivision (c).*

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<sup>2</sup> Paragraph (5) of subdivision (g) and subdivision (k) of Section 65915 of the California Government Code.

<sup>3</sup> Paragraph (3) of subdivision (d) of Section 65915 of the California Government Code.

*(B) The...incentive would have a **specific adverse impact**, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon **public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources** and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. (emphasis added)*

The State Density Bonus Law<sup>4</sup> also references a section of the Housing Element Law<sup>5</sup> to further clarify what is meant by “specific, adverse impact”:

*Paragraph (2) of subdivision (d) of Section 65589.5*

*(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is not feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households. As use in this paragraph, a “**specific, adverse impact**” means a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. **Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.** (emphasis added)*

Reasons to deny a request for an affordable housing incentive based on public health, safety, the physical environment or historic resources could include that the incentive, for example, prevents access to emergency vehicles, or is inadequately served by essential infrastructure (e.g. water or sewers), which could constitute a health or safety hazard. Reasons to deny a request for an affordable housing incentive based on affordable housing costs or affordable rents could include that the incentive, for example, is for aesthetic purposes only. Ultimately, these reasons must be significant and substantiated with evidence.

## **SAFEGUARDS**

Despite the limitations on the County’s discretion over the granting of density bonuses and affordable housing incentives, there are sufficient safeguards in place that protect neighborhoods from potential significant adverse impacts and inappropriate requests for density bonuses and affordable housing incentives.

### **1. The County Density Bonus Ordinance:**

The mechanisms put into place by the County’s density bonus ordinance in order to implement the provisions of the State Density Bonus Law, also serve as safeguards:

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<sup>4</sup> Paragraph (1)(B) of subdivision (d) of Section 65915 of the California Government Code.

<sup>5</sup> Paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code.

### Menu of Incentives:

The County density bonus ordinance grants affordable housing incentives through a “menu,” which is designed to encourage applicants to request modest incentives that are both meaningful, but have been deemed acceptable to the County. Prior to developing the menu of incentives, the Department advocated broadening the right of appeal to adjacent neighbors, and local town councils and similar neighborhood groups. However, with the introduction of the menu of incentives, the need to discourage “off-menu” incentives resulted in the development of a streamlined and clear process for granting “on-menu” incentives.

On-menu incentives are modest modifications of development standards, such as a limited height increase of 10ft., and contain safeguards, such as step-backs for height increases for density bonus projects adjacent to single family zoned properties. In addition, the menu discourages the granting of affordable housing incentives for projects that are located in Very High Fire Hazard Severity Zones, in an area that is not served by a public sewer system, within a significant ecological area, within an environmentally sensitive habitat area, and in areas having a natural slope of 25% or more.<sup>6</sup> It is impossible in the unincorporated area of Los Angeles County to a request a 300% density bonus or the allowance of an 11-story building, for example, as on-menu incentives.

Although it is theoretically possible for applicants to request frivolous “off-menu” incentives, such as exorbitant density bonuses and height increases, it is very unlikely that the applicant could financially justify or avoid significant adverse impacts if the requested incentives are unreasonable. However, because it is possible, the granting of off-menu incentives are subject to additional procedures, including notification to adjacent property owners, local community groups and the Regional Planning Commission; appeal by any interested parties to the Regional Planning Commission; and call for review by the Regional Planning Commission. The right of appeal to any interested persons also helps discourage inappropriate requests for off-menu incentives. In addition, the County density bonus ordinance discourages frivolous appeals by requiring that the appeal be limited to the specific grounds on which a project may be denied.

### Application Materials:

In the addition to the standard application materials for residential projects, the County density bonus ordinance requires the submittal of a real estate development pro forma to determine the relation of requests for both on- and off-menu incentives to maintaining the affordability of the housing set-asides. The County density bonus ordinance also

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<sup>6</sup> Menu of incentives, as described in Table C of subdivision (B) of Section 22.52.1840.

requires the submission of a supplemental environmental questionnaire, which includes questions concerning topography, cultural and historic resources, the presence of oak tress, the effect of the project on natural watercourses or surface flow patterns, grading, major geologic hazards, noise, fumes and other potential environmental concerns. The submittal of this information will be used to make an objective determination of whether to grant or deny requests for on- and off-menu incentives.

#### Monitoring/Covenant and Agreement:

The County density bonus ordinance requires that all projects granted density bonuses and affordable housing incentives are subject to a covenant and agreement, which runs with the land. In addition, the County density bonus ordinance requires annual registration of affordable housing set-asides, which are subject to monitoring by the Community Development Commission.

## **2. Existing Requirements and Review Procedures**

In addition to the safeguards contained in the County density bonus ordinance, there are safeguards within existing zoning requirements and review procedures:

#### Zoning:

While density bonuses and affordable housing incentives, by definition, go beyond zoning requirements there are safeguards established by the basic zoning that keep the process of granting density bonuses and affordable housing incentives in check.

One safeguard provided by the zoning is that density bonuses and affordable housing incentives can only be granted where the project, in and of itself, is permitted. For example, the County density bonus ordinance would not result in the granting of density bonuses and affordable housing incentives on property zoned M-1 (Light Manufacturing), because residential uses are prohibited in industrial zones. In addition, the County's density bonus ordinance would not result in the granting of density bonuses and affordable housing incentives for an apartment building on property zoned R-1 (Single Family Residence), because apartment buildings are not an allowed use in Zone R-1. In the case of the latter, however, density bonuses and affordable housing incentives could be applied to a single-family residential development, provided that the project could meet the threshold size to qualify for a density bonus. As a practical matter, density bonuses would be rare in the R-1 zones within urban areas, unless they are filed along with a land division map, which is more likely to occur in suburban areas of the County. Furthermore, in some cases, the application of the County density bonus ordinance would be contingent upon the approval of a zone change, coastal

development permit, a tract or parcel map, conditional use permit for residential uses in commercial zones, or other discretionary entitlements that would be required in order to authorize the use and development of the project. These discretionary approvals would be subject to full environmental review under CEQA and could be appealed or called up for review by the Board of Supervisors.

Finally, the provisions are subject to zoning enforcement procedures in the case of non-compliance.

#### CEQA:

The granting of density bonuses and affordable housing incentives, in and of themselves, are ministerial, which means that they are not subject to CEQA. However, projects that request density bonuses and affordable housing incentives that are granted through a discretionary procedure or processed concurrently with other discretionary entitlements are subject to CEQA. However, applicants for incentives will provide an environmental questionnaire, which will be reviewed by the DRP to assure that the granting of incentives will not adversely affect public health, safety, the physical environment or historic resources.

#### Case Review Procedures:

Finally, whether density bonuses and affordable housing incentives are granted through a discretionary or non-discretionary procedure, the project undergoes a comprehensive case review. While the review process at DRP is primarily dedicated to checking for consistency with Titles 21 and 22, the review process typically also includes checking for access issues, the nature of adjacent uses, the location of parking and loading facilities and other development features that could indicate a potential significant adverse impact. In the event that that a potential significant adverse impact "falls through the cracks," the process to obtain a building permit and certificate of occupancy by the Department of Public Works would provide additional levels of review.

### **3. Additional Steps of Inquiry**

In order to enhance the existing case review processes, the Department of Regional Planning will implement the following additional steps of inquiry for requests for density bonus and affordable housing incentives:

- Check possible listings of the property and adjacent properties on California Register of Historical Places.



- Review real estate development pro forma for relation of the requested incentive to the affordability of the housing set-asides, and refer the review to CDC, as needed.
- Consult with the Department of Public Works, Fire Department, CDC, Public Health, and any other County agency, as needed.
- Review the environmental questionnaire, and refer the review to the Department of Regional Planning Impact Analysis section, as needed.

## PART II: ROLES AND REVIEW PROCEDURES

	Administrative Housing Permit	Discretionary Housing Permit
<b>Director of Planning</b>	<ul style="list-style-type: none"> <li>• Reviews requests for density bonuses (22.52.1830).</li> <li>• Reviews requests for on-menu and off-menu incentives (22.52.1840), and consults with other County agencies, as needed.</li> <li>• Reviews requests for parking reductions (22.52.1850).</li> </ul>	N/A
<b>Regional Planning Commission (RPC)</b>	<ul style="list-style-type: none"> <li>• Reviews appeals made by any interested persons, under limited circumstances, on the Director's determination to grant or deny requests for off-menu incentives.</li> <li>• Calls the Director's determination to grant or deny requests for off-menu incentives, up for review, under limited circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>• Reviews requests for waivers or modifications to development standards, the Senior Citizen Housing Option, and Affordable Housing Option with a public hearing.</li> </ul>
<b>Any Interested Persons</b>	<ul style="list-style-type: none"> <li>• Files an appeal to the RPC, under limited circumstances, on the Director's determination to grant or deny requests for off-menu incentives.</li> <li>• Requests the RPC, under limited circumstances, to call the Director's determination to grant or deny requests for off-menu incentives, up for review.</li> </ul>	<ul style="list-style-type: none"> <li>• File an appeal to the BOS on the RPC's determination on requests for the waiver or modification of development standards, the Senior Citizen Housing Option or the Affordable Housing Option.</li> </ul>
<b>Board of Supervisors (BOS)</b>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Reviews appeals made by any interested persons on the RPC's determination on requests for the waiver or modification of development standards, the Senior Citizen Housing Option or the Affordable Housing Option.</li> </ul>

As the above table indicates, there are roles for any interested persons (i.e. neighbors, town councils, etc.), the Director of Planning, the Regional Planning Commission, and the Board of Supervisors. In addition, the table illustrates how the roles differ according

to the type of housing permit and review procedure: administrative or discretionary. When a request for a density bonus and affordable housing incentives, which would otherwise require an administrative housing permit, is concurrently processed with other discretionary entitlements, the Regional Planning Commission and the Board of Supervisors considers, but does not add discretion to the request for the density bonus and/or affordable housing incentives.

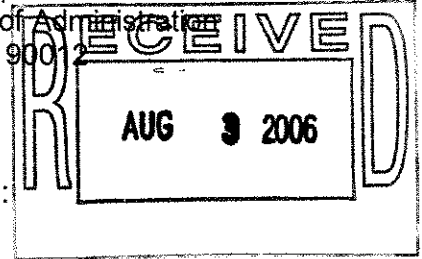
## **CONCLUSION**

While the State Density Bonus Law poses a challenge for local governments, this report concludes that there are enough safeguards within the State Density Bonus Law, the County density bonus ordinance and existing regulations and review procedures to protect the public and neighborhoods from potential significant adverse impacts and generally prevent the inappropriate granting of density bonuses and affordable housing incentives. In addition, the report indicates that the menu of incentives and other County provisions are consistent with the State Density Bonus Law, and therefore, do not require additional clarification from the State regarding the granting of affordable housing incentives. Furthermore, the report outlines the roles of the Director of Planning, the Regional Planning Commission, any interested person and the Board of Supervisors in the review of requests for density bonuses and affordable housing incentives.



MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Sachi A. Hamai, Executive Officer-  
Clerk of the Board of Supervisors  
383 Kenneth Hahn Hall of Administration  
Los Angeles, California 90012



At its meeting held July 25, 2006, the Board took the following action:

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At the time and place regularly set, notice having been duly given, the following item was called up:

Hearing on proposed amendments to the County Code, Title 21 - Subdivisions and Title 22 - Planning and Zoning, to establish and amend regulations and policies, delete obsolete provisions, and establish fees relating to density bonuses and incentives for affordable housing and senior citizen housing within the unincorporated area of the County to implement changes to the State-mandated Density Bonus Laws (All Districts); also approval of Negative Declaration (ND) and determination that the project will not have a significant effect on the environment or adverse effect on wildlife resources, that the proposed amendments are consistent with the Los Angeles County General Plan, and that the ND reflects the independent judgment of the Board, as further described in the attached letter dated May 31, 2006 from the Acting Director of Planning.

All persons wishing to testify were sworn in by the Executive Officer of the Board. Julie Moore and Ron Hoffman, representing the Department of Regional Planning were duly sworn and testified. Opportunity was given for interested persons to address the Board. Tim O'Connell, Jay Ross, Terra Donlon and other interested persons addressed the Board. Correspondence was presented.

Supervisor Yaroslavsky made the following statement:

"Minor changes to the proposed density bonus ordinance are required to ensure that the County ordinance meets the intent of the state mandate to 1) provide a stable and adequate supply of affordable and senior citizen housing and 2) provide sufficient opportunity for interested parties to bring available facts to the attention of County decision makers. These changes will help ensure that affordable and senior citizen housing developments will meet the needs of the populations they serve while not adversely affecting the communities where they are built.

(Continued on Page 2)

"Further, State law only allows the County to deny a non-discretionary housing application if at least one of two specific findings are made. Allowing appeals of a project that uses only 'on-menu' incentives or are based on facts irrelevant to those two legally acceptable reasons for denying a project would unnecessarily discourage the development of worthwhile affordable housing developments. However, the process as it currently stands fails to adequately promote the 'on-menu' incentives and unfairly denies the neighbor of a project the same privilege that a developer has to appeal a decision to the Planning Commission in order to bring relevant facts to light."

Therefore, Supervisor Yaroslavsky made a motion, seconded by Supervisor Molina, to close the hearing and approve the recommendations of the Regional Planning Commission as amended to include the following:

- Senior citizen housing developments shall be reserved for senior citizens for at least 30 years from the issuance date of the certificate of occupancy; and
- When an "off-menu" incentive is requested, an appeal to the Regional Planning Commission may be made by the applicant or any other interested party. Alternatively, the decision may be called up for review by the Commission within 21 days of receipt of notification. An appeal under these circumstances may only be deemed valid by the Planning Director if that appeal is based on facts that the Planning Commission can legally consider for denial of a project under state law. Further, all notices of decision must contain a statement informing recipients of the notice of the following: a) that the project is subject to an administrative permit and is not subject to discretionary review; b) of the limited grounds on which an appeal may be filed; and, c) of the limited grounds on which the Planning Commission may legally deny a permit under state law. The decision of the Planning Commission shall be final.

(Continued on Page 3)

Supervisor Burke offered a suggestion that Supervisor Yaroslavsky's motion be amended to instruct the Regional Planning Department staff to report back to the Board within 60 days on ways to protect the public and neighbors from developers who may utilize the density bonus to overcome or avoid some of the zoning restrictions and issues such as traffic, parking, water, and health and safety; whether or not clarification from the State is needed on "on-menu" and "off-menu" incentives to assist the County in meeting requirements. Supervisor Yaroslavsky accepted Supervisor Burke's amendment.

After further discussion, Supervisor Yaroslavsky made a motion, seconded by Supervisor Antonovich, to remove from the "on-menu" incentives, any right of appeal by a developer, so there would be no right of appeal on the "on-menu" incentives.

On motion of Yaroslavsky, seconded by Supervisor Burke, duly carried by the following vote: Ayes: Supervisors Molina, Burke, and Yaroslavsky; Noes: Supervisors Knabe and Antonovich, the Board closed the hearing and took the following actions:

1. Considered and adopted the attached Negative Declaration prepared for the project; determined that there is no substantial evidence that the project will have a significant effect on the environment, and that the Negative Declaration reflects the independent judgment and analysis of the Board;
2. Made a determination that the project is consistent with the goals, policies and programs of the Los Angeles County General Plan;
3. Made a finding that the proposed amendments to the County Code, Title 21 - Subdivisions and Title 22 - Planning and Zoning are de minimus in their effect on fish and wildlife resources and authorized the Acting Director of Planning to complete and file a Certificate of Fee Exemption for the project;
4. Approved the recommendations of the Regional Planning Commission as amended to include the following:
  - Senior citizen housing developments shall be reserved for senior citizens for at least 30 years from the issuance date of the certificate of occupancy;

(Continued on Page 4)

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- When an off-menu incentive is requested, an appeal to the Regional Planning Commission may be made by the applicant or any other interested party. Alternatively, the decision may be called up for review by the Commission within 21 days of receipt of notification. An appeal under these circumstances may only be deemed valid by the Acting Director of Planning if that appeal is based on facts that the Planning Commission can legally consider for denial of a project under state law. Further, all notices of decision must contain a statement informing recipients of the notice of the following: a) that the project is subject to an administrative permit and is not subject to discretionary review; b) of the limited grounds on which an appeal may be filed; and, c) of the limited grounds on which the Planning Commission may legally deny a permit under state law. The decision of the Planning Commission shall be final; and
  - Remove from the “on-menu” incentives, any right of appeal by a developer, so there would be no right of appeal on the “on-menu” incentives;
5. Instructed the Regional Planning Department staff to report back to the Board within 60 days on ways to protect the public and neighbors from developers who may utilize the density bonus to overcome or avoid some of the zoning restrictions and issues such as traffic, parking, water, and health and safety; whether or not clarification from the State is needed on “on-menu” and “off-menu” incentives to assist the County in meeting requirements; and
6. Instructed County Counsel to prepare the necessary ordinance for final approval.

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Attachment

Copies distributed:

Each Supervisor  
Chief Administrative Officer  
County Counsel  
Acting Director of Planning